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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,048	03/27/2004	Peter Laitmon	256-001	9535

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EXAMINER	
HOEY, ALISSA L	

ART UNIT	PAPER NUMBER
3765	

MAIL DATE	DELIVERY MODE
06/30/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/811,048	LAITMON, PETER	
	Examiner	Art Unit	
	Alissa L. Hoey	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 May 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) *2,3,7,11,12,14-17 and 20-33* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 4-6, 8-10, 13, 18 and 19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/09/08 has been entered.

Claim Objections

2. Claims 3 and 12 are objected to because of the following informalities: they are dependent upon a withdrawn claim and therefore should be labeled as "withdrawn" and not "original". Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 4-6, 8-10, 13 and 18-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amended language of "...wherein said waterproof leg encircling portion is uniform width from said top

opening to the knee and gradually increases from said knee to said bottom opening" of claims 1 and 13 were not supported in the originally filed disclosure and are therefore considered new matter.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1, 4, 6, 8, 9, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stentiford (US 1,580,453).

In regard to claim 1, Stentiford teaches a protective rain legging (10) comprising a waterproof leg encircling portion with an inner side, an outer side, a top opening and a bottom opening (figures 1 and 2: page 1, lines 14-19). The top opening being higher on the outer side of the leg encircling portion and sloping downward towards said lower inner side (figures 1 and 2). An attachment means (13, 14) fixedly attached to said outer side of said top opening for attaching the leg encircling portion to the waist portion of a garment worn by the wearer (figures 1 and 2). Additionally, Stentiford teaches the diameter of the leg encircling portion increases as it approaches the bottom opening, providing a bottom opening that covers the shoes of the wearer (see figures 1 and 2).

However, Stentiford fails to specifically teaches the leg encircling portion being a uniform width from the top opening to the knee and gradually increases from the knee to the bottom opening.

There is no teaching of the criticality of the leg encircling portion being a uniform width or increasing in width from the knee, and therefore the widths are arbitrary. As long as Stentiford teaches the increased width at the bottom opening to accommodate a shoe, it reads on the invention as disclosed.

In regard to claim 4, Stentiford teaches the attachment means comprises a first piece of fabric fixedly attached to the outer portion of the top opening of the leg encircling portion (13). The first piece of fabric being enough to allow the second end of the first piece of fabric to be attached to the garment around the waist of the wearer using a securing means (figures 1 and 2, identifier 14).

In regard to claim 6, Stentiford teaches the diameter of the leg encircling portion increases approaching the bottom opening, providing a bottom opening the substantially covers the shoes of the wearer, leaving the soles of the shoes exposed (figure 1, identifier 15).

In regard to claims 8, 9 , 18 and 19, Stentiford fails to teach the leg encircling portion having a promotional display affixed thereto, selected from the group of logo, advertisement, brand name, trademark and emblem.

It would have been obvious to have provided a promotional display or any other type of ornamentation on the leg encircling portion, because as long as the rain legging

prevents the user's leg from getting wet, the display on the ornamentation can be any as desired including promotional displays or no promotional displays.

In re Said, 161 F.2d 229, 73 USPQ 431 (CCPA 1947), the court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from prior art.

7. Claims 5, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stentiford in view of Wruck (US 5,033,126).

Stentiford teaches a protective waterproof legging as described above in claims 1 and 4. However, Stentiford fails to teach a securing means on the attachments means being , buckle, clip, snap, button or tie and the leg encircling portion being lined with an insulating material.

In regard to claim 5, Wruck teaches the securing means being selected from the group consisting of Velcro, buckle, clip, snap, button or tie (84, 80).

In regard to claim 10, Wruck teaches the leg encircling portion being lined with an insulating material (figure 10: column 8, lines 4-9).

In regard to claim 13, Stentiford teaches a protective rain legging (10) comprising a waterproof leg encircling portion with an inner side, an outer side, a top opening and a bottom opening (figures 1 and 2: page 1, lines 14-19). The top opening being higher on the outer side of the leg encircling portion and sloping downward towards said lower inner side (figures 1 and 2). An attachment means (13, 14) fixedly attached to said outer side of said top opening for attaching the leg encircling portion to the waist portion of a garment worn by the wearer (figures 1 and 2). Additionally, Stentiford teaches the first

pieces of fabric being long enough to allow the second end of the piece of fabric to be attached to the garment around the waist of the wearer. Additionally, Stentiford teaches the diameter of the leg encircling portion increases as it approaches the bottom opening, providing a bottom opening that covers the shoes of the wearer (see figures 1 and 2).

However, Stentiford fails to specifically teaches the leg encircling portion being a uniform width from the top opening to the knee and gradually increases from the knee to the bottom opening.

There is no teaching of the criticality of the leg encircling portion being a uniform width or increasing in width from the knee, and therefore the widths are arbitrary. As long as Stentiford teaches the increased width at the bottom opening to accommodate a shoe, it reads on the invention as disclosed.

However, Stentiford fails to teach an insulating layer being fixed into the inside of the leg encircling portion and a Velcro strip as a securing means for the first and second piece of fabric.

Wruck teaches the securing means being selected from the group consisting of Velcro, buckle, clip, snap, button or tie (84, 80).

Wruck teaches the leg encircling portion being lined with an insulating material (figure 10: column 8, lines 4-9).

It would have been obvious to have provided the protective waterproof legging of Stentiford with the securing means and insulating material of Wruck, since the protective waterproof legging of Stentiford provided with securing means would allow for

the user to easily put on and/or remove the leggings without having to remove a belt portion and the insulating material would provide for a more durable and protective legging for the user.

Response to Arguments

8. Applicant's arguments filed 04/25/07 have been fully considered but they are not persuasive.

I.) Applicant argues that Stentiford fails to teach a waterproof leg encircling portion that is uniform in width from the top opening to the knee and gradually increases from the knee to the bottom opening.

Examiner notes that the original disclosure fails to teach the waterproof leg encircling portion that is uniform in width from the top opening to the knee and gradually increases from the knee to the bottom opening, and is therefore considered new matter. Further, there is no criticality as to why the leg portion is uniform in width from the top to the knee and for the leg portion to increase from the knee to the bottom opening. The only disclosure on the increased width of the leg portion pertains to the bottom portion so as to fit over a shoe or boot. As long as Stentiford teaches the increased width of the bottom portion to fit over a shoe or boot, it reads on the limitation as disclosed.

II) Applicant argues the Stentiford fails to teach the top opening being higher on the outer side of the leg encircling portion and sloping downward towards the lower inner side.

Examiner notes the Stentiford does teach the top opening being higher on the outer side of the leg encircling portion and sloping downward towards the lower inner side (see figures 1 and 2).

Conclusion

9. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765